STATE OF IOWA

DEPARTMENT OF COMMERCE

UTILITIES BOARD

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| IN RE:<br><br>RESTORATION OF AGRICULTURAL LANDS DURING AND AFTER PIPELINE CONSTRUCTION | DOCKET NO. RMU-99-10 |

**ORDER ADOPTING RULES**

(Issued January 10, 2001)

Pursuant to Iowa Code §§ 17A.4, 476.1, and 476.2 (1999), and 1999 Iowa Code Supplement §§ 479.20, 470A.14, and 479B.20, the Utilities Board (Board) on May 19, 2000, issued an order in Docket No. RMU-99-10, In re: Restoration of Agricultural Lands During and After Pipeline Construction, "Order Commencing Rule Making." The "Notice Of Intended Action" was published in IAB Vol. XXII, No. 25 (6/14/00) p. 1917, as ARC 9878A.

The Board previously initiated a rule making in this docket on September 15, 1999, to receive public comment on the adoption of proposed land restoration rules. That rule making was published in the IAB Vol. XXII, No. 7 (10/6/99) p. 573, as ARC 9400A. The Board, in the prior rule making, received written comments and held a workshop to receive oral comments. On November 24, 1999, the Board issued an "Order Scheduling Additional Comments." Additional comments were filed on or before December 8, 1999.

The Board, on May 15, 2000, issued an order terminating the prior rule making. The notice of termination was published as ARC 9877A. The Board stated in the

order terminating the prior rule making that it intended to receive additional written and oral comments on a new set of proposed land restoration rules. The proposed new rules incorporated written and oral comments regarding ARC 9400A.

In the current rule making the Board is proposing to rescind current 199 IAC Chapter 9 and replace it with a new Chapter 9. The "Adopted and Filed" notice, which is attached to this order and incorporated herein by reference, contains an explanation of the procedural history of the current rule making, a discussion of the comments, and the modifications to the rule making made by the Board.

**IT IS THEREFORE ORDERED:**

1. A rule making, identified as Docket No. RMU-99-10, is adopted.

2. The Acting Executive Secretary is directed to submit for publication in the Iowa Administrative Bulletin an "Adopted and Filed" notice in the form attached to and incorporated by reference in this order.

**UTILITIES BOARD**

/s/ Allan T. Thoms

/s/ Susan J. Frye

ATTEST:

/s/ Judi K. Cooper
Acting Executive Secretary

/s/ Diane Munns

Dated at Des Moines, Iowa, this 10th day of January, 2001.

**UTILITIES DIVISION [199]**

**Adopted and Filed**

Pursuant to Iowa Code sections 17A.4, 476.1, and 476.2 (1999), and Iowa Code Supplement sections 479.29, 479A.14, and 479B.20, the Utilities Board (Board) gives notice that on January 10, 2001, the Board issued an order in Docket No. RMU-99-10, In re: Restoration of Agricultural Lands During and After Pipeline Construction, "Order Adopting Rules." The Notice Of Intended Action for this rule making was published in IAB Vol. XXII, No. 25 (6/14/00) p. 1917, as ARC 9878A.

The Board issued a previous "Order Commencing Rule Making," on September 15, 1999, in Docket No. RMU-99-10 to receive public comment on the adoption of the land restoration rules. The previous Notice of Intended Action was published in the IAB Vol. XXII, No. 7 (10/6/99) p. 573, as ARC 9400A. Written comments were filed and a workshop to receive oral comments was held in that previous rule making. Additional comments were filed on or before December 8, 1999.

On May 15, 2000, the Board issued an order In re: Restoration of Agricultural Lands During and After Pipeline Construction, "Order Terminating Rule Making," The previous rule making was terminated pursuant to the authority of Iowa Code section 17A.4(1)"b." The Board began a new rule making to receive additional written and oral comments on proposed land restoration rules based upon the written and oral comments in the previous rule making. The proposed new rules incorporate written and oral comments regarding ARC 9400A. The new rule making docket retained the designation as Docket No. RMU-99-10, to facilitate continuity between the previous and current rule making proceeding.

In this proceeding the Board is proposing to rescind current 199 IAC Chapter 9 and replace it with a new Chapter 9. Currently, Chapter 9 sets the standards for underground improvements, soil conservation structures, and restoration of agricultural lands after pipeline construction. The rules apply to pipelines transporting any solid, liquid, or gaseous substance except water, including intrastate and interstate natural gas pipelines and hazardous liquid pipelines.

The new Chapter 9 proposed in this proceeding is intended to implement the statutory changes adopted in 1999 Iowa Acts, ch. 85 [160] including prescribing standards for the restoration of land for agricultural purposes during and after pipeline construction. The legislation amended Iowa Code sections 479.29, 479.45, 479.48, 479A.14, 479A.24, 479A.27, 479B.20, 479B.29, and 479B.32.

The legislation broadened the Board's authority to establish standards for the restoration of agricultural lands during and after pipeline construction. The amendments directed the Board to adopt rules that include a list of requirements in the statutes. The legislation affirms the county boards of supervisors' authority to inspect projects and gives the county boards of supervisors the authority to file a complaint with the Board in order to seek civil penalties for noncompliance with various requirements. The proposed rules, pursuant to the statute, allow landowners and pipeline companies to negotiate separate agreements with provisions different from those found in the statute and rules.

In the new Chapter 9, the Board establishes a procedure for review of land restoration plans. Those pipeline companies that are subject to Iowa Code chapters 479 and 479B, and that must file a petition for pipeline permit, shall file a land restoration plan at the time they file a petition for permit or application for amendment of

permit with the Board. Those interstate pipeline companies that are subject to Iowa Code chapter 479A and have construction projects requiring a certificate from the Federal Energy Regulatory Commission (FERC) must file a land restoration plan at least 120 days prior to construction. The proposed rules describe the contents of a land restoration plan and set out detailed requirements for land restoration.

Written statements of position on the proposed rules were to be filed no later than July 5, 2000. Written comments were filed by MidAmerican Energy Company (MidAmerican), Northern Natural Gas Company and Northern Border Pipeline Company (Northern), the Consumer Advocate Division of the Iowa Department of Justice (Consumer Advocate), Iowa Farm Bureau Federation (Farm Bureau), Iowa Association of Municipal Utilities (IAMU), and landowners Donald Langbehn, Terry Shultz, Lorraine Klaes, Marilyn E. Helfter, Gordon E. Mau, Lenora K. Olson, Richard. L. Soules, Robin Hewer, David R. Whitman, Donald and Sue Sweeney, John Henry Dirks, Paul Ketelsen, Gene and Wanda Heitz, Thomas Jasper, Hans and Rose Siemers, and Bernice Claeys. On July 6, 2000, landowners Robert R. Garner and Martin and Marge Curtis filed comments. Landowners Jack and Deb Hartman and James L. Shover filed comments on July 7, 2000. On July 10, 2000, comments were filed by State Senator Kitty Rehberg. On July 11, 2000, the rule making came before the Administrative Rules Review Committee.

A public meeting to receive comments on the proposed rules was held on July 19, 2000. Northern, MidAmerican, Farm Bureau, Consumer Advocate, Alliance Pipeline L.P. (Alliance), Shirley Helmrichs, Gordon Mau, Myron Zumbach, Mike Ryan, Terry Ryan, Jim Shover and Rick Mormann participated. At the oral presentation, interested

persons requested to file additional comments addressing matters raised during the oral presentation. On August 3, 2000, the Board issued an order scheduling additional comments to be filed on or before August 18, 2000. Comments were received from Consumer Advocate, MidAmerican, Alliance, Northern, Property Rights Association II, and landowners Myron L. Zumbach, Thomas L. Jasper, Gordon Mau, Robert and Bernice Claeys, Charles G. Gregorie, and Mark A. Hughes.

Many of the oral and filed comments concerned the recent Alliance pipeline project. As described by the landowners, the Alliance pipeline construction project had many problems with land restoration. Although this rule making is not the proper forum to correct the problems that occurred on the Alliance project, the issues raised and the comments of the landowners have been very helpful and informative in developing these rules. These rules will apply to all future pipeline construction, and the Board has attempted to apply the statutes and develop standards in a reasonable and practical manner. Compliance with these rules will not guarantee that problems will not occur, but by following the standards implemented by these rules the number of problems with any future pipeline should be greatly reduced.

The Board has made some revisions to the rules as published on June 14, 2000, in IAB Vol. XXII, No. 25, p. 1917, as ARC 9878A. The Board will address the comments concerning the proposed rules and the revisions below.

Comments were received concerning subrule 9.1(1). IAMU recommended the proposed subrule 9.1(1) be modified to state that pursuant to Iowa Code section 479.29(1), the subrule would not apply to land located within city boundaries unless the land is used for agricultural purposes. The Board believes that IAMU's suggestion has

merit. Iowa Code sections 479A and 479B each contain a similar provision. The subrule will be adopted as proposed with the addition of the following sentence at the end of the subrule, “Nor do the requirements of this chapter apply to land located within city boundaries, unless the land is used for agricultural purposes.”

No comments were specifically directed to the provisions of subrule 9.1(2). There were several comments that the Board finds demonstrate a need to modify the subrule for clarity with regard to the intent of the rules. First, it should be stated that these rules constitute the minimum land restoration standards for pipeline construction that does not require a project-specific land restoration plan. Second, when a project-specific plan is filed, the Board reserves the right to impose requirements that are in addition to or more stringent than these rules, to address issues specific to the nature and location of the particular pipeline project. The Board finds that the review of a site-specific plan and acceptance of comments would be of little purpose if such discretion were not reserved. The Board will add the following clarifying language after the second sentence of the subrule: "The rules in this chapter shall constitute the minimum land restoration standards for any pipeline construction for which a project-specific plan is not required. When a project-specific land restoration plan is required, following notice and comment, the Board may impose additional or more stringent standards as necessary to address issues specific to the nature and location of the particular pipeline project."

Comments were made concerning paragraph 9.1(3)"a." IAMU suggested that the paragraph be clarified by including deference to municipal zoning to exclude planned industrial parks from the application of these rules. It appears from the comments that

IAMU wishes to exclude from these rules agricultural land that is in the process of being developed, and the utility installing the gas pipe may be a municipal utility and therefore subject to these rules for land restoration. IAMU suggests that applying land restoration standards intended to maintain agricultural productivity may be without purpose and unnecessarily burdensome if the property is in the process of conversion to other uses. The Board finds that the proposed rules do not need to be modified as IAMU suggests. If the agricultural land where pipeline construction occurs is in the process of being converted to other uses these rules would not apply. Municipal zoning is one indication that the use of the land had changed from agricultural use, but is not necessarily determinative. Zoning may occur many years in advance of a change in use. The Board believes that the statute is clear about restoration where the land is used for agricultural purposes. Whether a specific parcel of land is subject to these rules is a determination to be made on a case-by-case basis.

No comments were received concerning paragraph 9.1(3)"b."

Comments were received concerning paragraph 9.1(3)"c." Farm Bureau requested that farm tenants be included in the definition of landowner in the paragraph. Farm Bureau argued that the tenant has a legitimate and valid interest in the property being restored, and will be affected if improper restoration results in additional work and reduced crop yields. In the Notice of Intended Action, published in the IAB June 14, 2000, the Board addressed this issue. In the notice the Board stated, "with the possible exception of contract purchasers, tenants do not usually possess property rights that allow the tenants to dictate how the property is treated. Where the legislature intended the term landowner to have more than its usual meaning, or to give rights to persons

who are not the landowner, it has specifically done so. Expanding the term creates ambiguities and difficulty in determining who is entitled. Non-owners can be difficult to identify and locate. *See Anstey v. Iowa State Commerce Commission*, 292 N.W.2d 380 (Iowa 1980)." The Board finds that Farm Bureau's comment was considered when this rule making was published and no evidence was presented subsequently to support a modification to the paragraph. The tenant is protected from injury to crops, livestock, etc, and is specifically entitled to damages pursuant to Iowa Code sections 479.46(7), 479A.25(7), and 479B.30(7).

No comments were received concerning paragraphs 9.1(3)"d" and "e."

Comments were received concerning paragraph "f." Farm Bureau, Consumer Advocate, Senator Rehberg and several landowners were concerned that pipelines would abuse the exclusion for “emergency construction” as a loophole to avoid application of these rules during routine activities. Additionally, the pipeline companies asserted the rules could hamper their ability to respond promptly and effectively to emergency situations. Farm Bureau and Senator Rehberg suggested limiting emergencies to instances of imminent danger to life or property. The pipeline companies contended emergencies should include the risk of a major service outage. MidAmerican stated that it is unlikely that a definition could be crafted to encompass every conceivable definition of an emergency. Farm Bureau noted that the rule as drafted would exclude not only actions during excavation to expose the pipeline, but also restoration activities such as tile repair when the emergency had passed.

Consumer Advocate recommended modifying the paragraph by adding the phrase “or any other activity” to the definition. Northern suggested deletion of the word

“operation” because operation of the pipeline does not involve construction activities. MidAmerican proposed a definition that would exempt projects under a mile in length. Northern recommended “substantial disturbance to the land” be defined as “having or likely to have a significant adverse effect on the environment or the agricultural productivity of the affected land absent compliance with the restoration standards established by these rules.” Northern also maintained that it is unclear in proposed paragraph "f" that “substantial disturbance” applies to all types of activities, and not just maintenance.

The commenters did not dispute that it is reasonable to provide an exception for emergencies. The objections and comments were to the language crafted to avoid abuse. Based upon the comments the Board finds that limiting emergency situations to those only involving imminent danger to life and property might unreasonably limit a pipeline company's ability to correct emergency situations that involve major service outages. The pipeline companies supported the inclusion of these emergencies. A major service outage could affect many Iowa communities that are served by single feed (radial) gas feeder lines. An incident that threatens service interruption to hundreds or thousands of Iowa citizens may not pose an imminent danger to life or property, but warrants the fastest possible response.

Iowa Code section 480.1 is the response of the Legislature to a similar question in a similar context. The Board believes that incorporating a definition consistent with section 480.1 in the definition of pipeline construction will address the concerns expressed in the comments. The term emergency is defined in Iowa Code section 480.1, as "a condition where there is clear and immediate danger to life or health, or

essential services, or a potentially significant loss of property." The Board finds that this definition of emergency meets the requirements of these rules and should be added to the proposed definition in paragraph "f."

In addition, the Board will add a sentence to the end of the paragraph to ensure that it is clear that the standards established by these rules must be complied with for restoration after the emergency situation is concluded. The Board will also modify the paragraph to clarify that the exemption for emergencies includes only work done during the emergency. The paragraph will be modified by revising “but shall not include emergency repairs” to “but shall not include work performed during an emergency.”

Consumer Advocate suggested the addition of the phrase “or any other activity” and Northern proposed removal of the word “operation.” The Board finds neither argument persuasive. Consumer Advocate gave no example of any activity that might not be included in the language proposed by the Board, and other pipeline companies might not interpret the term “operation” as Northern does.

MidAmerican proposed a definition that would exempt projects under a mile in length. It appears, however, that MidAmerican's primary concern was the 120-day before construction requirement for filing a land restoration plan. The 120-day requirement would apply only to certain interstate pipeline projects and does not affect intrastate gas pipeline operators such as MidAmerican. The proposed exemption will not be adopted.

Northern suggested modification of the rule by adding a new definition of “substantial disturbance to the land.” The Board finds that Northern's suggestion is too subjective,

open to interpretation and would detract from, rather than add to, the clarity of the rules. No other commenter expressed a need for further definition of this term.

Northern also stated a concern that it is not clear that “substantial disturbance” applies to all types of activities, not just maintenance. Northern’s proposed language appears unnecessarily wordy, but the proposed rule could be clearer. The rule will be modified to state “or” rather than “and” to specify that the rules would apply to any single type of action.

In addition the Board notes that the statutes specifically provide that “construction” includes removal of a previously constructed pipeline. A removed pipeline will not necessarily be replaced. The term “removal” will be added to the first sentence of the paragraph.

Making the revisions as discussed above, the adopted paragraph will state that pipeline construction means "a substantial disturbance to agricultural land associated with the installation, replacement, removal, operation or maintenance of a pipeline, but shall not include work performed during an emergency. Emergency means a condition where there is clear and immediate danger to life or health, or essential services, or a

excellent as written. She indicated supervisors would not be appropriate contacts. The Hartmans, landowners, noted that there were no fewer than six county inspectors on their stretch of pipeline, and they did not know who was accountable for inspection on their property. Northern also suggested the notice be provided by the pipeline company "or the contractor" rather than "and the contractor."

The Board finds that Northern's proposal would allow notice to almost anyone it could locate. The Board believes that this is too broad, could cause confusion and could result in the appropriate person not being informed. The Board understands that a lack of clarity concerning whom to contact could create similar problems. However, because not all projects are the same, a rigid rule concerning whom to contact would not seem appropriate. The Board will therefore add a sentence to the end of the definition that allows the pipeline company to request the county designate someone to receive notice. The Board finds that Northern's recommendation that the notice be provided by the pipeline company "or" its contractor rather than "and" its contractor is reasonable and will be adopted.

No comments were received concerning paragraphs 9.1(3)"h," "I," and "j." The Board will correct a typographical error in "j."

Comments were received concerning paragraph 9.1(3)"k." Several commenters noted a typographical error in the last sentence of the paragraph. Farm Bureau supported paragraph "k" as proposed. Consumer Advocate objected to the phrase "ordinarily moved in tillage," arguing that topsoil may be deeper than that. Consumer Advocate recommended "Ap horizon" rather than "A horizon." Landowner Mau had similar objections to the term "plow layer," equated the Ap horizon to the plow layer, and

further stated that topsoil may be more than A or Ap horizons. The only part of the proposed definition that received broad support was the reference to organic content and color. Mau suggested use of the term “surface soil” instead of topsoil, and a definition that referred to multiple soil layers and used terms such as “solum” and “substratum.” Property Rights Association II indicated general support for this approach.

Even if other terms may have greater technical accuracy, the Board believes the familiar and generally understood term “topsoil” is more appropriate for these rules. It appeared from Mau’s testimony at the oral presentation that “surface soil” may include more that what is usually considered the topsoil, and "surface soil" has no clearer or easily understood definition than "topsoil." However, the Board finds that the focus by Mau on topsoil as the upper part of the soil which is the most favorable material for plant growth to be more appropriate language for paragraph "k" than the definition in the proposed paragraph.

The Board finds that the terms as proposed might be interpreted to limit the depth of the topsoil. The Board will therefore eliminate those terms that might be limiting from the definition. The Board emphasizes that its primary concern and the primary concern of these rules is the protection and restoration of topsoil to land that has been disturbed by pipeline construction. The Board has determined that a boarder definition will be more likely to ensure that it is understood that all topsoil needs to be removed and protected, not just to a certain horizon, or a tillable or plow layer. Accordingly the Board will define "topsoil" as "the upper part of the soil which is the most favorable material for

plant growth, and which can ordinarily be distinguished from subsoil by its higher organic content and darker color. "

Comments were received concerning rule 9.2. Some of the comments, especially those filed by MidAmerican, indicate continuing confusion over the criteria for the filing of project-specific land restoration plans for pipelines, which are not interstate natural gas pipelines. In the second sentence of the proposed rules, Northern recommended referencing “case-specific” FERC certificates, and citing the federal law, which dictates when a FERC certificate is required. Northern also recommended adding a sentence specifying that for all other interstate natural pipeline projects, these rules will be deemed to constitute the land restoration plan unless a specific plan is filed.

The continued confusion over the criteria for the filing of project-specific land restoration plans for pipelines, which are not for interstate natural gas, indicates that clarification of the first sentence of this rule is necessary. The Board will delete the first sentence of the proposed rule and replace it with, "For intrastate natural gas pipelines and all hazardous liquid pipeline projects, land restoration plans shall be prepared and filed with the appropriate petition pursuant to Iowa Code sections 479.29(9) or 479.20(9) and this chapter for pipeline construction projects that require a pipeline permit from the Iowa Utilities Board, or for amendments to a permit that propose construction or relocation."

Northern suggested the rules reference “case-specific” FERC certificates, and cite the federal law regarding when a FERC certificate is required. The rules allow pipelines to reference case-specific FERC certificates and federal statutes to support its

compliance with these rules. The Board does not believe specific references to either FERC certificates or federal statutes are appropriate in these rules.

Northern also recommended adding a sentence specifying that for all other interstate natural gas pipeline projects, these rules will be deemed to constitute the land restoration plan unless a specific plan is filed. This concept is consistent with the Board's explanation in the Notice Of Intended Action, although it applies to all pipeline projects for which a project-specific plan is not required, not just interstate natural gas pipelines. The Board agrees that this concept is not, but should be, explicitly stated in these rules. However, Board believes a more appropriate place for such a statement is in rule 9.1(2). The Board has made the clarification in that subrule.

Farm Bureau made comments that supported subrule 9.2(1). No other comments were made concerning the subrule.

No comments were received concerning subrule 9.2(2).

Comments were received concerning subrule 9.2(3). Property Rights Association II and Senator Rehberg opposed allowing waiver of the separate land restoration plan requirement when an environmental impact statement (EIS) is prepared. Property Rights Association II, Senator Rehberg, and Farm Bureau similarly opposed allowing waivers where an environmental assessment (EA) is prepared. Consumer Advocate supported the proposed subrule. Property Rights Association II argued that the FERC certificate, not the EIS or EA, is the controlling authority on federally mandated land restoration requirements. Senator Rehberg contended that the legislature did not intend for an EIS or EA to be filed in lieu of a land restoration plan. Farm Bureau asserted EAs

are not as comprehensive as the requirements for a land restoration plan and have less opportunity for public input than an EIS.

Iowa Code section 479A.14(9) provides that the requirements for filing a plan may be waived by the board to the extent an environmental impact statement addressing the land restoration requirements in the statute was prepared by the federal energy regulatory commission. The Board finds that Iowa Code section 479A.14(9) gives the Board the authority to consider whether the content of an EIS satisfies the statutory land restoration standards in lieu of requiring preparation of a separate land restoration plan. The Board thinks this is a reasonable alternative, and also finds that it may consider EAs for the same purpose. The statute does not require the Board to accept such a filing in lieu of a plan, but the Board is obligated to review the content of an EIS or EA to ensure that it complies with the statute and these rules. The procedure for review of plans in paragraph 9.3(2)"b" recognizes that the FERC certificate may accept, reject or modify land restoration criteria from the EIS or EA and these changes would require Board approval. Nothing in the Board's proposed rules relies on any authority inherent in the EIS or EA. The rules as proposed require the Board to find that the statutory requirements are "substantively satisfied" and the Board believes that this creates a suitable standard.

The Board notes that its consideration is not limited to comments filed with FERC on either an EIS or EA. Proposed paragraph 9.3(2)"*b"* allows the same opportunity for input to the Board regardless of whether an EIS, an EA, or a stand-alone plan is involved. The Board does not have to accept an EA that does not contain the necessary level of detail, nor is the Board under any obligation to accept the terms of

the EA as filed with no allowance for further comment. Farm Bureau's comments repeat an argument addressed by the Board in the Notice Of Intended Action in this docket. This issue has been considered and the comment does not provide any new grounds to support a modification.

The proposed rules comply with the statutory provisions that allow the waiver of the filing of a written land restoration plan to the extent an environmental impact statement addressing the land restoration subjects was prepared by the FERC. The prior proposed rules did not conform with the statute and did not include the term "waiver." Additionally, the Board has adopted new waiver requirements in 199 IAC 1.3, which will have to be followed to substitute an EIS or EA for a plan. The Board believes that companies are aware that land restoration proposals will receive the same level of scrutiny, and have the same opportunity for input, regardless of whether the information is submitted in the form of an EIS, an EA, or a stand-alone document.

No comments were received concerning subrule 9.3(1). The Board finds that the subrule should be modified based upon the comments that reflected continuing confusion over which procedures apply to which types of pipelines. It appears all users of the subrule would benefit from additional clarification. The subrule should be modified to specifically state which types of pipelines it applies to, rather than only citing to the sections of law that apply.

The Board finds that the first sentence of the subrule be revised to add "An intrastate natural gas pipeline, or a hazardous liquid pipeline," at the beginning of the sentence.

The only comments on subrule 9.3(2) were filed by Northern. Northern proposed the first part of the subrule be revised to read, "An interstate pipeline company required by

rule 9.2 to file a specific proposed land restoration plan shall file a plan with the Board and the Office of Consumer Advocate no later than 120 days prior to the date construction is scheduled to commence. Any petition for waiver of this plan filing requirement may be made at any time prior to the date construction is scheduled to commence."

Northern's suggestion to add the word “interstate” and a reference to rule 9.2 has merit, but needs to further specify “interstate natural gas.” This clarification is consistent with the language proposed in subrule 9.1(2). Citing to the rule that specifies when a plan or some variant thereof is required is superior, in this context, to a general reference to the statute. Northern, however, offered no explanation for it's remaining revisions. The Board finds that to allow the filing of a petition for waiver just prior to the commencement of construction would not allow for a thorough Board review and is inconsistent with the intent of these rules.

The Board finds that the first sentence of the rule should be revised to read, "An interstate natural gas pipeline company required by rule 9.2 to file a land restoration plan shall file a proposed plan, or a petition requesting waiver of the plan filing requirement, with the Board and the Office of Consumer Advocate no later than 120 days prior to the date construction is scheduled to commence."

No comment was specifically directed at paragraph 9.3(2)"a."

Comments were received concerning paragraph 9.3(2)"b." Northern recommended changing the 45-day deadline for Board decision to 30 days “to avoid introducing further delay into the FERC approval process.” Northern also requested clarification of the last

sentence of paragraph "b", which Northern interprets to be a “savings” clause designed in part to ensure that the Board does not exceed its jurisdiction.

The Board established the 45-day period to strike a balance between the Board’s need to review and obtain comments, and the desire to avoid conflict with FERC actions. A 30-day period would allow only 10 days between receipt of comments and the date of an order.

The Board interprets Northern's request for clarification of the last sentence of the paragraph to be a continuation of the preemption arguments previously raised by Northern in this docket. The interstate pipelines argued in the prior rule making that pipeline construction may commence as soon as the FERC certificate is issued, and that state proceedings that would delay this construction are preempted. To avoid this possible conflict the Board established the process set forth in the rules to complete Board action on the land restoration plan in advance of construction. This may require the Board to base its decision on an EIS or EA that is not in final form and before issuance of the FERC certificate. The FERC certificate could rule on land restoration issues in a way not anticipated when the Board reached its decision. The rule reserves the Board’s right to re-examine its decision if circumstances change. This review would not be for the sole purpose of acquiescing to whatever FERC decided. It is anticipated the above situation would be rare, and that by participating in the comment process in the FERC proceeding the risk of conflict can be minimized. To satisfy Northern's request might be interpreted as evidence of intent by the Board to avoid any action that might possibly conflict with a FERC decision. This is not the Board's intent, but rather the Board is attempting to establish a procedure that avoids conflict where possible.

Comments were received concerning paragraph 9.3(2)"c." Northern suggested the copy of the FERC-required notice to landowners provided to the Board in subparagraph (1) should be “served” rather than “filed.” The Board finds that the filing of the notice is preferable.

No comments were filed pertaining to subparagraph (2) requiring the Board to be informed of any open public meetings on the project.

Northern proposed deletion of the requirement to provide copies of Iowa landowner letters to the Board as proposed in subparagraph (3). The Board finds that this requirement should not be eliminated. A presumption exists that Northern monitors all of its filings before FERC and would have knowledge of landowner letters whether Northern receives separate legal service or not. Northern does not argue that it would not have knowledge, or that there are alternate means by which the Board could readily obtain copies of such letters.

The Board finds that Northern's recommendation to eliminate the requirement concerning other mitigation agreements in subparagraph (4) also should not be adopted. The information in the mitigation agreements is relevant to Iowa projects. The Northern Border extension project of 1998 is one example of a project where the FERC applied the terms and conditions of an agreement with the state of Illinois to Iowa construction. The Iowa/Minnesota Agricultural Impact Mitigation Agreement with Alliance was modeled after the Illinois agreement for that project.

Comments were received concerning subrule 9.3(3). The subrule requires the pipeline company provide copies of the land restoration plan to landowners and others. The subrule further provides that the companies do not need to provide copies of any

associated EIS or EA “if copies are provided to landowners by the federal energy regulatory commission.” Consumer Advocate suggested amending the subrule to “have already been provided.”

The Board will not adopt Consumer Advocate's, proposed modification. If the modification were to be adopted the Board anticipates that the effect would be that pipeline companies would simply delay providing copies of the plan until after FERC did its mailings. No advantage is seen to this scenario. Plus an EIS can be inches thick and weigh several pounds, and requiring the mailing of large numbers of what will be duplicate copies appears an undue burden.

Comments were received concerning subrule 9.4(1). Numerous landowner comments allege the Alliance project did not properly remove or replace topsoil. To prevent the problem from occurring in future projects, Consumer Advocate, Farm Bureau, Senator Rehberg, and several landowners strongly urge the Board to adopt “staking” requirements for topsoil removal. According to Consumer Advocate, this would involve taking soil core samples at intervals along the pipeline route (Consumer Advocate suggested every 200 feet along the route centerline, Mau 100 feet), measuring the depth of topsoil, from that measurement determining the amount of topsoil soil to be removed, and writing the information on wooden stakes to be placed along the edge of the right-of-way. The proponents contended that only in this way can the pipeline company, the inspector, and the landowner know how much soil is supposed to be removed, and whether it was properly replaced. These commenters did not feel the operators of earthmoving equipment could be relied upon to judge how much topsoil should be removed. Consumer Advocate further proposed rules that

would require extensive post-construction coring, at pipeline company expense, if a complaint was made to the Board from a landowner, county inspector or by Consumer Advocate.

Alliance opposed the staking proposal. Northern stated that it saw no benefit to staking, and MidAmerican expressed reservations over its value. All three companies maintained that topsoil depth can vary erratically and any depth on a stake is not necessarily representative of an adjacent area. Strict reliance on a particular depth could increase the amount of subsoil scraped up with the topsoil if shallower topsoil is encountered. MidAmerican used staking on a project, but apparently was not impressed with the results. The three companies contended that equipment operators, using the difference in soil color as a guide, obtain the most reliable results.

A number of commenters proposed that more than 12 inches of topsoil be removed from the subsoil storage area, up to and including all topsoil regardless of depth. Farm Bureau suggested up to 36 inches, which would be the same depth as the trench.

Some commenters suggested that the rules require removal of the topsoil of the working side of the right-of-way also, again up to and including all topsoil regardless of depth. Many of these commenters allege that the heavy construction equipment used on the Alliance project commingled subsoil and topsoil, especially in wet soil conditions.

Consumer Advocate stated it supported the subrule as proposed. Consumer Advocate noted that in many parts of the state removal and replacement of more than 12 inches of topsoil in the storage area can result in undesirable mixing of topsoil and subsoil, and can also adversely affect soil drainage. Consumer Advocate proposed that if a landowner can secure the opinion of a qualified soil scientist that a greater depth of

topsoil removal, up to 36 inches, is required to preserve the productive capacity of the land, the pipeline company should be required to remove the topsoil to that depth. Consumer Advocate also argued the pipeline company should not be given *carte blanche* to decide to alter the slope or contour of the land, and that if the landowner objects the alteration should not be allowed unless expressly authorized by FERC. Consumer Advocate also recommended the phrase “to facilitate construction” should be deleted, arguing that otherwise the rule would not apply to changes to land slope or contour made for other reasons.

The issue of staking raises concerns as to whether staking could eliminate the difficulties of topsoil separation as anticipated by its proponents. The Board understands that several methods if done properly will achieve the purpose of protecting the topsoil. Staking works best where the depth of soil to be removed is precisely known, as is the case with many types of earthmoving projects. Where the depth of topsoil is not necessarily constant or consistent, staking may not be accurate. Based upon landowner comments and the comments of Farm Bureau and Consumer Advocate, the Board is concerned that the current methods of measuring the depth of topsoil to strip are not adequate. The Board though is also aware that the pipeline companies have used the judgement of the equipment operators and the color of the soil as a guide successfully in many instances. Balancing these two positions the Board finds that rather than a mandatory requirement for all projects, the landowner should be given the option to require measurement of the topsoil before and after construction. The Board will therefore modify subrule 9.4(1) to state, "A pipeline company shall, upon

a landowner's request, measure topsoil depth at selected locations before and after construction."

Concerning Consumer Advocate's post-construction complaint process, rule 9.7 provides, consistent with the statute, that requests for compliance action by the Board must originate with the county board of supervisors. Additionally, the Board does not believe that after-construction coring at locations other than at exact pre-construction locations would necessarily establish that topsoil replacement was inadequate.

The Board also has serious doubts about the wisdom of stripping topsoil from the working side of the right-of-way in the majority of instances. Commenters have alleged that topsoil stripping irrevocably damages soil structure and mixes sublayers. The Board stated, in the Notice of Intended Action (ARC 9878A), "removing topsoil from the working right-of-way (excepting wet conditions) would risk more damage to the topsoil and place underlying tile lines at greater risk than leaving it in place."

The problems associated with precise removal of topsoil, without introducing subsoil, are well documented. The removal of topsoil reduces the soil cushion over tile lines, increasing the risk of damage from construction equipment. It does not reduce compaction, only results in it being deeper. The primary benefit appears to be prevention of soil mixing in ground disturbed by construction equipment. Subrule 9.4(10) provides for topsoil stripping of the working side of the right-of-way as a possible alternative to stopping construction in soft soils. But in considering this benefit it must be remembered that the Alliance project constructed an unusually large pipeline, and installed pipe unusually heavy even for its size. These rules must apply to all pipeline construction, most of which will not involve pipe or equipment, or have the potential for

damage, of this degree. These rules will also apply to maintenance, operation and repair activities which may require an excavation but which need not involve a lot of heavy equipment. The very large construction projects are the ones most likely to require a project-specific land restoration plan be prepared, at which time the justification for topsoil stripping on the working side of the right-of-way can be considered.

In those cases where the topsoil in the subsoil storage area is deeper than 12 inches, the proposed rule will provide for a clean layer of replaced topsoil. This side will not experience the construction traffic of the working side, so is less subject to other damage. The Board's proposed rule is also consistent with FERC guidelines. The Illinois Department of Agriculture negotiated an Agricultural Impact Mitigation Agreement for the 1998 Northern Border Pipeline that did require up to 36 inches of topsoil removal from the subsoil storage area, but required only up to 12 inches for the subsequent Alliance project. The two pipelines go through generally the same part of the state. Illinois does not appear to have pursued the 36" standard on other subsequent projects. There is no record to show why Illinois acted as it did, but it supports a conclusion that the Board should not adopt a requirement for all projects that another jurisdiction with experience in such matters applied once but did not repeat.

Addressing Consumer Advocates comments, the Board finds that where a landowner has evidence that topsoil should be stripped to a greater depth to maintain the productive capacity of the land, the landowner could negotiate an agreement with the pipeline company, or the information would be useful to the Board when a case-specific land restoration plan is being considered.

With regard to the contour of the land, while pipeline routes prefer to follow the lay of the land as much as possible, in rough terrain or on steep sideslopes, it may be necessary do some grading for construction to be possible. The Board does not believe that recognizing in these rules that this occasional, but sometimes necessary, work occurs, and providing protections for the landowner, constitutes a "*carte blanche*." It would not be appropriate to provide in these rules a method for a landowner to block a pipeline project by objecting to a necessary element of pipeline construction on a route approved by the Board or FERC. It is also unclear why a pipeline company would do such work other than to facilitate construction, and since the law and the rules only apply to pipeline construction, construction done for some other purpose would not be covered by these rules.

Comments were received concerning paragraph 9.4(1)"b." Landowner comments stressed the need for separation, but did not comment on the language of the paragraph. Farm Bureau supported the rule as proposed. Northern suggested the second sentence of rule be amended to state the spoil piles must have sufficient separation from the topsoil piles. Northern would further allow use of stored topsoil for construction roads if necessary to comply with FERC limitations on the width of construction right-of-way. Northern argues a state is preempted from requiring an action that would conflict with FERC right-of-way restrictions.

Northern would alter the rule to allow use of topsoil to construct field entrances, contending it may be the only soil available. Landowner commenters were adamantly opposed to removal of topsoil from the property for this (or any other) purpose, fearing it will not be returned or if returned will be contaminated with rocks or gravel. At oral

presentation it was suggested gravel, which could be later reused for other purposes, or ag lime, which farmers would accept on their fields, were alternatives. Another alternative would be to remove the topsoil and use subsoil to build entrances.

Property Rights Association II strongly supported prohibitions against removing topsoil from a property for field drives or any other purpose. It proposed paragraphs 9.4(1)"a," "b," "c," and "d" should be consistently written to require return of essentially the original soil material to the original location and parcel. The association made this same comment with reference to subrule 9.4(8). The association equated topsoil removal from a property to theft, and was concerned that any soil brought in to make up a shortage would be of inferior quality.

The Board finds that the term “spoil pile” is a generic term that could refer to either stored topsoil or subsoil. To prevent misunderstanding the rule will be revised to read, “The stored topsoil and subsoil shall have sufficient separation to prevent mixing during the storage period.”

The Board understands that removal of topsoil from the property is an important issue with landowners. It is proper that the rule not allow it without landowner consent. Pipeline companies have alternatives if landowner consent is not obtained.

The Board finds also that it is the obligation of the company to request from FERC a right-of-way width sufficient for construction in compliance with all applicable rules, and Northern’s proposed change should not be adopted. The rule as proposed would adequately address the majority of the concerns expressed by Property Rights Association II.

No comments were received concerning 9.4(1)"c."

There were numerous landowner comments concerning paragraph 9.4(1)"d." These complaints were that the replaced topsoil contained subsoil and that the depth replaced was inadequate. The landowner complaints were primarily about performance or enforcement. There were no suggested changes to the language of paragraph "b." The Board would note that when topsoil is stripped to the subsoil, it is virtually inevitable that some subsoil will be taken with it. Regardless of precautions taken, earthmoving equipment is not that precise. The presence of some evidence of subsoil in the topsoil may not be entirely preventable, but should be minimized by these rules.

Comments were received concerning 9.4(2)"a." Northern would add language to specify that paragraph "a" only applies to new construction, and would not apply to pre-existing conditions. The Board finds that Northern's concern is adequately addressed by use of the word "installed" in the rule and Northern's language is not necessary. The Board will adopt the paragraph as proposed.

No comments were received concerning the 9.4(2)"b" or subparagraphs (1) and (3). Several comments were in agreement with the protections proposed in subparagraph (4). Property Rights Association II suggested the protections provided in subparagraph (4) be installed immediately.

Comments were received concerning subparagraph (2). This subparagraph proposes a timeframe for temporary repairs. Northern proposed deletion of this subrule, contending it is superfluous in light of subparagraph (1), which requires temporary repair of any tile that is flowing water. This is consistent with comments by pipeline companies in the prior phase of this docket, which argued that temporary repair of dry lines is not necessary. Numerous other commenters contended the proposed subparagraph is too

lenient and that 10 days is too long. Alternatives suggested by the commenters include immediate repair, repair within 24 or 48 hours, and repair within 3 days. The three days was based on the opinion that the tile should be temporarily repaired before the next heavy rain, and that weather forecasts are not accurate beyond 3 days. The recommendations for more rapid action were generally accompanied by contentions that the right-of-way and adjacent lands would not drain properly if the tile were not repaired, and many included examples of drainage problems occurring during and after the Alliance project.

While many commenters charged that drainage problems occurred during and after Alliance project, none specifically blame lack of temporary repair across the trench for causing or exacerbating the problem. Nor is there criticism of the temporary repair methodologies proposed in these rules.

The Board in drafting this subparagraph considered the terms “immediate” as well as “prompt” before deciding on the phrase “as soon as practicable” to establish when the protective measure installation should be made. The Board finds that the comments raise no issues not considered in the prior rule making.

The proposed subparagraph only addresses repairs where the tile line crosses the trench. The language in the subparagraph addresses a temporary pipe bridging the gap to carry drainage water. In comments filed in the prior rule making, pipeline companies saw little benefit to themselves from temporary repairs of dry lines. If heavy rains occurred and the tile began to flow, the companies expected the trench to become wet from surface and groundwater flow regardless. The companies consider installing pipe in trenches containing water to be a common construction condition and of no

great import. However, the cost and burden of unnecessary tile repairs are of great concern to them. Pipeline companies consider this cost and burden to outweigh the benefit from less water entry if the tile begins to flow.

The Board stated in the Notice of Intended Action (ARC 9878A), "The comments from farm and landowner interests indicate that the fundamental concerns to be addressed are maintaining drainage from adjacent lands during and after construction and preventing entry of mud and debris into the open ends of the tile. It appears these concerns can be protected without requiring temporary repair in all instances."

For the above reasons, the Board sought a balance between landowner concerns and pipeline company interests by providing a window during which dry tile need not be temporarily repaired. If the tile began to flow temporary repair would be required, and until it was installed landowners would be protected by allowing the tile to drain into the trench, and by protecting the open tile ends. The pipeline company would bear the inconvenience of any extra water in the trench. The Board believes that the subparagraphs also have the added benefit of encouraging pipeline companies to complete installation as soon as possible, after which permanent repairs could begin.

Many of the comments related to the Alliance project that had particular problems. The project installed an unusually large, heavy pipe which in turn required large heavy equipment. This equipment damaged or crushed tile and interfered with tile drainage. Such damage cannot be temporarily repaired within a specified time period. Its existence is unlikely to be known in advance of development of drainage problems. And if known, it is unclear how repairs could be made or preserved while pipeline construction remains in progress. Repairs to damage of this nature must rely on

subparagraph 9.4(2)"g." Problems of the magnitude caused by the Alliance project are not anticipated on more typically sized pipeline projects.

The Board finds that the evidence does not support a finding that more rapid temporary repair would resolve the types of problems raised by commenters, and finds that the balancing of interests in the proposed subparagraphs should be retained.

Comments were received concerning 9.4(2)"c." After the phrase stating the repairs must be inspected by the county inspector, Northern suggested the addition of the phrase, “provided, however, that if proper notice is given, construction will not be delayed due to a county inspector’s failure to be present on the site.” Northern suggested the exception provided by statute to the requirement that a county inspector be present be included in the paragraph. The Board finds that Northern's proposed modification is reasonable.

Comments were received concerning 9.4(2)"d." Northern proposed limiting application of the repair requirements of subparagraph (6) to damage “within the work area.” Property Rights Association II alleged that on the Alliance project a tile repair was made using solid wall PVC pipe, which did not drain groundwater and caused a wet spot. They contend this pipe would have satisfied the requirements of the proposed rule.

The Board finds that Northern’s proposed change could be construed to exempt repair of damage that could occur outside the work area, such as that caused by entry of mud or debris, and should not be adopted. The Board does not believe that solid wall PVC pipe could be construed to be drain tile under the language of the proposed subparagraph. The Board will not make either of the changes.

Comments were received concerning 9.4(2)"e." After the phrase stating the repairs must be inspected by the county inspector, Northern recommended the addition of the following phrase: “provided, however, that if proper notice is given, construction will not be delayed due to a county inspector’s failure to be present on the site.” Northern suggested that the exception provided by the statute concerning the requirement that a county inspector be present be included in paragraph "e." The Board will adopt Nothern's proposed modification.

Consistent with its comments regarding paragraph "e," Northern proposed the addition of the same phrase regarding the county inspector's failure to be present after notice be made to paragraph "f." The Board will make the modification as proposed.

Comments were received concerning paragraph 9.4(2)"g." Numerous landowners reported damage to drain tile as a result of construction. No commenters proposed changes to proposed paragraph "g." Paragraph "g" is intended to require long-term remediation of drainage problems caused by pipeline construction, which would include tile crushed or damaged under traveled portions of the right-of-way. Regrettably, it may take some time before the location and extent of all such damage becomes apparent and can be repaired. The paragraph will be adopted as proposed.

Comments were received concerning paragraph 9.4(3)"a." In the first sentence of the paragraph Northern suggested the 3-inch rock size be changed to 4-inch to be consistent with FERC requirements. In the second sentence Northern would change from 24 to 12 inches the depth to which trench backfill cannot contain excessive rock, again to be consistent with FERC standards.

Gene and Wanda Hertz argue all rocks should be removed because even small ones can get into combines. They urged the Board not to let FERC set this standard. Landowner David Whitman contended his farm has consolidated rock, and is concerned that if broken rock is used as trench backfill above the frost line, frost heave will bring that rock to the surface.

The Board selected the 3-inch standard because of a landowner statement made to FERC at a public meeting on the Alliance project. The statement contended that a 3-inch rock was large enough to cause significant damage to harvesting equipment. No comments have disputed the accuracy of that statement. The Board recognizes that trenching may bring up large rocks from deep in the ground. The proposed 24-inch rule would assure that when the trench is backfilled those rocks are not at a depth where they could be struck by even deep tillage equipment. The Board finds that the rule as proposed sets a reasonable standard to minimize the risk of equipment damage, and is more conservative than the FERC guidelines. It also appears appropriate to amend the paragraph to not allow broken rock backfill above the frost line.

It has also been suggested that the phrase “unless provided otherwise in a written agreement” be struck from first sentence of the paragraph. The Board finds that the inclusion of this statement is not necessary as a reminder to landowners that they can reach separate agreements with the pipeline companies to address their individual concerns. The separate agreements are addressed in rule 9.6. The Board will remove the reference to separate agreements in this paragraph.

Comments were received concerning paragraph 9.4(3)"b." Farm Bureau opposed allowing in-situ remediation of spills. Farm Bureau alleged pipeline companies have

been careless and inconsiderate in such matters as changing oil in construction equipment, and believed this rule would allow the company to shirk its responsibility.

The Board finds that in-situ remediation is a not uncommon method of treating chemical and petroleum spills, and has the advantage of not requiring removal of soil from the property. The Board does not believe that the availability of this alternate remedial method will encourage irresponsible behavior.

Comments were received concerning subrule 9.4(4). A number of landowner commenters alleged the Alliance project had caused soil compaction on their property.

On the deep tillage requirements, Northern suggested the addition of language allowing exceptions when "otherwise agreed by the pipeline company and the landowner." Northern believes there may be instances, such as shallow tile, where tilling to the specified depth may be undesirable. Mau also recognized that deep tillage could affect tile lines. He recommended that it was preferable to till deep and fix the tiles later.

When the topsoil was not removed from the area to be tilled, Northern would prohibit tillage deeper than the topsoil depth. Northern argues that deep tillage could cause soil commingling. Property Rights Association II wants the replaced layer of topsoil tilled as well.

Farm Bureau supported the provision that deep tilling be done when soil conditions are appropriate. Mau contended at oral presentation that if the topsoil is not removed during construction, it should be stripped for deep tilling. By removing the topsoil layer, the depth of tillage into the subsoil would be increased.

Although a number of landowner commenters alleged compaction damage, they did not offer suggestions on how the rule could be improved. Exceptions under agreements with landowners are addressed in rule 9.6 and no need is seen to refer to this possibility in individual rules. The compaction that tillage is intended to relieve is not necessarily limited to the depth of the topsoil. Deep tillage is routinely used in agriculture to relieve soil compaction caused by agricultural equipment and it is not clear why tillage to relieve compaction caused by pipeline equipment would have consequences greater than that of a common agricultural practice.

Based upon the comments, the Board finds that the merits of requiring tilling of the replaced topsoil seem questionable. The replaced topsoil was not subjected to the equipment and vehicle travel to the same extent as soils in place during the installation of the pipeline. Subsequent preparation of a seedbed for planting a farm or cover crop will till the soil. If the soil will remain exposed for a long period, the potential for wind erosion is increased if the soil is freshly tilled.

The Board finds that considering all the comments, including Mau's, alleging damage to the topsoil and soil mixing that can accompany stripping, it does not appear topsoil stripping for the sole purpose of subsoil tillage is desirable. Not every individual situation can be addressed in the rules. It seems unlikely there will be underground facilities within the depth of deep tilling (tile lines are normally buried 4 feet deep). If the pipeline company or landowner are aware of special circumstances, this may be a subject for discussion and, if necessary, a special agreement.

A limitation of deep tillage is that it may not go as deep as the compaction. A recommended practice for relieving deep compaction is two years of a cover crop of

perennial vegetation with deep taproots. Legumes familiar in Iowa, such as alfalfa, are examples of such vegetation. The deep roots can often penetrate further than mechanical means. The “green manure” value of such crops can also restore surface soil quality. In addition, such temporary land use may also eliminate weeds and plant diseases that may be introduced by construction equipment. These rules could not mandate such practice, as land use decisions are up to the landowner. The Board though believes this is an action that landowners may take to relieve the effects of pipeline construction, but is not one that can be mandated or addressed by these rules.

Proposed subrule 9.4(4) was published with a typographical error in the heading, and the Board believes that the heading should be modified. The Board will correct the typographical error and modify the heading to "Restoration after soil compaction and rutting."

Comments were received concerning subrule 9.4(5). After the phrase stating the remedial action must be inspected by the county inspector, Northern proposed the addition of language indicating that the county inspector's failure to be present would not delay construction if proper notice had been given. Northern also recommended the first sentence require structures be restored to the condition existing “prior to” rather than “at the time of” construction.

The Board finds that the language concerning county inspectors should be added to this subrule, and that Northern’s suggested phrasing of the first sentence is preferable and should be adopted.

No comments were received concerning paragraph 9.4(6)"a," but comments were received concerning paragraph "b." The paragraph would not require a cover crop if

construction was completed too late in the year for a cover crop to become established, and if the land is to be tilled the following year. Jack and Deb Hartman, landowners, state that their land met these conditions, and topsoil was lost to wind erosion. They propose that the landowner be allowed to require the right-of-way be mulched, preferably with corn or bean stubble, and that organic mulch originates from the same farm to prevent transfer of weed seeds from another area.

The Board is not convinced of the merits of Hartman's proposal and believes that its terms could be difficult to meet. Under Hartman's proposal, the preferred corn or bean stubble mulch would have to originate from the same farm. This might not be realistic because the farm may not have enough mulch available to cover a large area associated with pipeline construction. Finding material for mulch may be impossible if the crop is in the field. The proposal raises issues that could be significant to the landowners and the companies without further discussion or input and which are not adequately addressed in this rule making. The Board though does agree that the topsoil should be protected even if the completion of construction occurs too late in the year to require a cover crop. The Board encourages the companies to negotiate separate agreements with the landowners for ground cover in these circumstances.

Comments were received concerning subrule 9.4(7). Northern suggested that the subrule as proposed apply only to pipelines other than interstate natural gas pipelines, and a separate subrule be added to apply only to interstate pipelines. Northern contends its suggestion would prevent conflicts between state and FERC requirements on future drain tile installation.

Under Northern's proposal, interstate pipelines would contact the landowner and local soil conservation authorities to determine the location of drain tile likely to be installed within three years of construction, and place the pipeline at a depth sufficient to avoid interference with future drain tile systems. But for "adjacent pipeline loops" the depth of the new pipeline need not exceed the depth of the existing pipeline to be paralleled. No landowners or other commenter proposed changes to this subrule.

The Board finds that there are three clear objections to Northern's proposal. First, separate standards for different types of pipelines are considered undesirable. Second, three years seems arbitrary. Third, a specific exception for a new pipeline paralleling an existing line would not be appropriate in these rules. It is understood that FERC accepts Northern's recommended practice for parallel pipelines. But whether it would be appropriate to install a new pipeline at the same depth as an existing pipeline is a case-specific determination. It may be reasonable in some situations but not others. As occurred with the Alliance project, the new pipeline may be significantly larger than the one it would parallel, and the greater depth to the bottom of the new pipe could create a barrier to tiles that could pass under the existing line. The shallower depth could also unnecessarily disrupt adjacent existing drain tile systems. The proposed term "adjacent pipeline loops" would apparently limit application of such a rule to a pipeline company that also owns the existing pipeline to be paralleled, but the principle remains. The 1998 expansion of the Northern Border pipeline, which included 147 miles of new 36-inch pipeline paralleling an existing 30-inch pipeline, would apparently have fit under this exclusion.

The Board finds that other aspects of Northern's proposal require additional consideration. Under the proposed paragraphs, landowners would have to approach the pipeline company with their plans while Northern has proposed that the company approach the landowner. The proposed rules require a well-defined plan prepared by a qualified technician, while Northern's proposal would not.

The Board finds that the comments on this subrule from the first stage of this rule making are particularly relevant. In the prior rule making Alliance alleged that the subrules could be abused to impose unreasonable requirements on pipeline depth, and called for third party review of disputes. The Board responded that the "defined by a qualified technician" provision provided protection from unreasonable representations of future plans. Therefore, it would not be appropriate to now eliminate this provision. The Board finds though that the concept of a requirement that the pipeline company inquire about the landowner's future plans has merit. The value of a requirement to contact soil conservation agencies is uncertain, as they seldom do tile work and the landowner would be the most definitive source on future plans.

These rules would not preclude a pipeline company, under FERC guidelines or its own initiative, from using a lesser standard of evidence for landowner representations of future plans than is contained in these rules.

The Board finds that a new first sentence should be added to each paragraph. The sentence should state that the pipeline shall consult with the landowner concerning the landowner's plans for future drain tile installation, and the pipeline company shall consult with the landowner concerning the landowner's plans for future installation of soil conservation practices and structures.

No comments proposed changes to 9.4(8). Some commenters alleged that Alliance Pipeline construction had adversely impacted the slope and contour of their land. Compliance with this rule would address the concerns raised in comments.

Comments were received concerning 9.4(9). Northern would add language stating that leaving a road or field entrance may be contingent upon the approval of state or county road or highway authorities. Farm Bureau recognizes this may be a factor but does not suggest the rule be modified.

It is does not appear necessary in these subrules to specifically address every situation where another authority may have jurisdiction. In this case, however, future misunderstandings may be prevented if the possible need for approval by public road authorities is mentioned. "Highway authorities" might be a more proper legal term, but laymen may interpret it to mean only paved roads, so "public road" is recommended.

The Board will modify the final sentence of the subrule to indicate that, subject to any necessary approval by public road authorities, if a field entrance or road is to be left in place, it shall be left in a graded and serviceable condition.

Comments were received concerning subrule 9.4(10). A number of commenters made strong statements about the damage caused by heavy construction equipment in wet soils. Soil mixing, damaged tile, and severe rutting were the prime concerns. The commenters though did not provide additional language to improve the proposed subrule.

Farm Bureau generally supported the proposed rule, but recommended "undue compaction" should be added to the list of stop-work items. Property Rights Association II would prohibit construction in wet conditions and give the county inspector authority to

stop construction. Consumer Advocate would give the county inspector authority to stop construction if continued construction would "adversely affect the productive capacity of the land."

The Board finds that the additional terms proposed by Farm Bureau and Consumer Advocate appear too vague and subjective to include in the subrule, and their proposals would be very difficult criteria to apply in the field. The statute provides for construction to stop where soil mixing and damage to tiles may occur because of wet conditions. Soil mixing can be observed and the risk to tile lines can be a subjective conclusion. Both can be anticipated from the depth of rutting or extent of soil movement. The Board does not believe that a county inspector could apply terms such as "undue compaction" or "adversely affect the productive capacity of the land," with any consistency. The Board finds that the statute provides sufficient authority with regard to cessation of construction during wet conditions.

Comments were received concerning rule 9.5. Farm Bureau supported the proposed rule. Northern would add that the telephone number could be either toll free or collect. The Board finds that because a collect call is toll free to the caller, which is the intent of the rule, the suggestion by Northern is not necessary.

Comments were received concerning rule 9.6. The Legislative Rules Review Committee and Property Rights Association II expressed concern that a pipeline company could use this provision to persuade or intimidate a landowner into signing an agreement that would not provide adequate land restoration. The Rules Review Committee was also concerned that there is no oversight over the terms of such agreements.

Northern would add that the county's copy of the agreement could be provided to the county inspector, or to the county board of supervisors or other person or group responsible for the inspection.

The Board proposed the rule to reflect the provisions of Iowa Code sections 479.29(10), 479A.14(14), and 489B.20(10). The statutes provides that separate agreements may be entered into between the landowner and the pipeline company. The statutes then provides that the separate agreements must be consistent with the statute and rules. Review and retention of the separate agreements is by the county inspector. The Board finds that a duplication of the review and retention of the separate agreements by the Board would not provide additional safeguards to warrant the time and expense involved. Another issue with oversight would be timing. While some agreements are reached well in advance of construction and may be filed with the easement, others may be implemented the same day; for example, an agreement on where the pipeline company could dispose of excess rock. Oversight could delay implementation of accommodations mutually agreed to in the field.

The Board has no separate authority to take any action concerning the agreements. The county board of supervisors is given the authority to file a complaint if the agreements do not comply with these rules or the statute. Not even the landowner has been given the authority to file a complaint.

The statutes and rules are for the benefit of landowners. As part of easement or other negotiations the landowner can seek special terms they feel are appropriate for their property, and cannot be told by the pipeline company that such separate agreements are prohibited. The Board is aware of no instance where a landowner was

persuaded to sign an agreement that the landowner later claimed was insufficient or signed under duress. The Board believes that the statute would make an agreement that was not consistent with the law or these rules invalid and unenforceable.

The Board finds that Northern's proposal that copies of the agreement could be provided to the county via any number of persons is not acceptable. To the extent it could be difficult to determine who should receive the information, the same remedy could be provided as was proposed under the definition of "proper notice." The Board will add a sentence to the rule that authorizes the pipeline company to request that the county designate a specific person to receive the agreements.

Comments were received concerning 9.7. There were numerous criticisms pertaining to enforcement on the Alliance project. There were no negative comments on the language of the rule as drafted, but there were calls for expanded enforcement options and authority. Farm Bureau requests a rule requiring the pipeline company pay the county's attorney fees and costs in enforcing the rules. Farm Bureau would also have the Board allow landowners to file petitions seeking compliance directly with the Board.

Consumer Advocate would require the following: 1) A county-by-county report by the pipeline company to the Board on compliance with these rules for each individual landowner; 2) That the Board annually collect, compile, and make available for public inspection a report for each affected county on the relative productivity of land affected by pipeline construction; and 3) A requirement that affected land be restored to its original production capacity within seven years.

Northern would add after both citations to the statutes the following statement: ”to the extent such statutes are applicable.” Northern asserted the phrase would clarify that different laws apply to different companies.

The Board finds that the statute clearly sets out the method of enforcement for violations of the statute, these rules, or the separate agreements. The Board does not believe that it can create additional methods of enforcement, beyond those specifically mentioned in the statute. The Board finds that Farm Bureau’s proposal is not consistent with the statutory scheme that authorizes complaints be brought by the county board of supervisors. The Board finds that Consumer Advocate’s suggestions go beyond the statute and would create additional workload. Consumer Advocate ‘s second item in particular would be better proposed to a soil conservation or agriculture agency.

The Board finds that the additional language proposed by Nothern is not necessary. It is clear that the rules apply only to the extent that they conform to the applicable statutes.

No comments were filed regarding the drawings PL-1 and PL-2. These drawings provide instruction on proper methods for permanent tile and terrace repair and no change is proposed.

There were additional comments filed in this rule making that did not specifically address the proposed rules and which addressed problems that occurred during construction of the Alliance project. These comments have provided valuable context for consideration of these rules and hopefully have helped the Board promulgate rules that will minimize many of the problems encountered on the past projects. Comments were also provided by MidAmerican urging the Board to recognize that these rules will also

apply to pipelines installed by Iowa gas companies, not only to large interstate pipeline companies. MidAmerican states its belief that the proposed rules successfully strike an appropriate balance, but expresses concerns that the rules may be modified in reaction to a major interstate pipeline project and thus place unnecessary restrictions on smaller projects.

The Board has attempted to balance the interest of the landowners and the pipeline companies and to adopt rules that would hopefully eliminate many of the landowners concerns, while at the same time adopting rules that apply to large projects and minor excavations for repairs or maintenance. The Board recognizes that larger projects will require a project-specific land restoration plan be approved by the Board and during that review project specific conditions may be adopted.

The primary intent of the statute and therefore these rules is the preservation of the topsoil that is found on agricultural land. This primary intent is to be balanced with the necessity of building natural gas pipelines through agricultural land to meet the current and future energy needs of the state of Iowa. The legislature has struck a balance between these two competing interests and the Board has attempted to keep this balance in promulgating rules to implement the statutory scheme.

The Board believes that it has maintained the proper balance. It has taken additional time to consider the many issues raised by terminating the original rule making and allowing for additional comments and consideration in this rule making. Many comments received were similar to those received in the prior rule making, but many provided additional insight into the issues being addressed. As with all rule makings, which involve a balancing of competing interests, there may have to be

modifications of these rules as they are applied. The Board believes that the rules set out below and adopted will enable landowners to protect the value of their land, without placing prohibitive restrictions on companies proposing to build pipelines in this state.

The rules will become effective on March 14, 2001.

The following rules are adopted.

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Rescind 199–Chapter 9 and adopt the following new chapter in lieu thereof:

CHAPTER 9

RESTORATION OF AGRICULTURAL LANDS DURING AND AFTER PIPELINE CONSTRUCTION

**199–9.1(479,479A,479B) General information.**

**9.1(1)** Authority. The standards contained herein are prescribed by the Iowa utilities board pursuant to the authority granted to the board in Iowa Code Supplement sections 479.29, 479A.14, and 479B.20, relating to land restoration standards for pipelines. The requirements of this chapter do not apply to interstate natural gas pipeline projects that were both constructed between June 1, 1999, and July 1, 2000, and that also received a certificate from the Federal Energy Regulatory Commission prior to June 1, 1999. Nor do the requirements of this chapter apply to land located within city boundaries, unless the land is used for agricultural purposes.

**9.1(2)** Purpose. The purpose of this chapter is to establish standards for the restoration of agricultural lands during and after pipeline construction. Agricultural lands disturbed by pipeline construction shall be restored in compliance with these rules. The rules in this chapter shall constitute the minimum land restoration standards for any pipeline construction for which a project-specific plan is not required. When a project-

specific land restoration plan is required, following notice and comment, the Board may impose additional or more stringent standards as necessary to address issues specific to the nature and location of the particular pipeline project.

**9.1(3)** Definitions. The following words and terms, when used in these rules, shall have the meanings indicated below:

a. "Agricultural land" shall mean:

(1) Land which is presently under cultivation, or

(2) Land which has previously been cultivated and not subsequently developed for nonagricultural purposes, or

(3) Cleared land capable of being cultivated.

b. "Drainage structures" or "underground improvements" means any permanent structure used for draining agricultural lands, including tile systems and buried terrace outlets.

c. "Landowner" means a person listed on the tax assessment rolls as responsible for the payment of real estate taxes imposed on the property.

d. "Pipeline" means any pipe, pipes, or pipelines used for the transportation or transmission of any solid, liquid, or gaseous substance, except water, in intrastate or interstate commerce.

e. "Pipeline company" means any person, firm, copartnership, association, corporation, or syndicate engaged in or organized for the purpose of owning, operating, or controlling pipelines.

f. "Pipeline construction" means installation, replacement, removal, operation or maintenance of a pipeline, but shall not include work performed during an emergency.

Emergency means a condition where there is clear and immediate danger to life or health, or essential services, or a potentially significant loss of property. When the emergency condition ends pipeline construction will be in accordance with these rules.

g. “Proper notice” to the county inspector means that the pipeline company or its contractor shall keep the person responsible for the inspection continually informed of the work schedule and any schedule changes, and shall provide at least 24 hours' written notice before trenching, permanent tile repair, or backfilling is undertaken at any specific location. The pipeline company may request that the county inspector designate a person to receive such notices.

h. "Soil conservation practices" means any land conservation practice recognized by federal or state soil conservation agencies including, but not limited to, grasslands and grassed waterways, hay land planting, pasture, and tree plantings.

i. "Soil conservation structures" means any permanent structure recognized by federal or state soil conservation agencies including but not limited to toe walls, drop inlets, grade control works, terraces, levees, and farm ponds.

j. "Till" means to loosen the soil in preparation for planting or seeding by plowing, chiseling, discing, or similar means. For the purposes of this chapter, agricultural land planted using no-till planting practices is also considered tilled.

k. "Topsoil" means the upper part of the soil which is the most favorable material for plant growth, and which can ordinarily be distinguished from subsoil by its higher organic content and darker color.

**199–9.2(479,479A,479B) Filing of land restoration plans.** For intrastate natural gas and all hazardous liquid pipeline projects, land restoration plans shall be prepared and

filed with the appropriate petition pursuant to Iowa Code sections 479.29(9) or 479B.20(9) and this chapter for pipeline construction projects which require a pipeline permit from the Iowa Utilities Board, or for amendments to permits that propose pipeline construction or relocation. Plans for interstate natural gas pipeline construction projects requiring a certificate from the Federal Energy Regulatory Commission shall be prepared pursuant to Iowa Code Supplement section 479A.14(9) and this chapter.

9.2(1) Content of plan. *A* land restoration plan shall include but not be limited to the following:

a. A brief description of the purpose and nature of the pipeline construction project.

b. A description of the sequence of events that will occur during pipeline construction.

c. A description of how compliance with subrules 9.4(1) to 9.4(10) will be accomplished.

d. The plan should include the point of contact for landowner inquiries or claims as provided for in rule 9.5(479,479A,479B).

9.2(2) Plan variations. The board may by waiver accept variations from this chapter in such plans if the pipeline company is able to satisfy the standards set forth in 199 IAC 1.3(17A,474) and if the alternative methods would restore the land to a condition as good or better than provided for in this chapter.

9.2(3) Environmental impact statement, environmental assessments, and agreements. Preparation of a separate land restoration plan for an interstate natural gas company project subject to Federal Energy Regulatory Commission authority may be waived by the board if the requirements of Iowa Code Supplement section 479A.14

are substantively satisfied in an environmental impact statement or environmental assessment, as defined in 18 CFR Section 380.2, and as accepted and modified by the Federal Energy Regulatory Commission certificate issued for the project. Preparation of a separate land restoration plan may be waived by the Board if an agricultural impact mitigation or similar agreement is reached by the pipeline company and the appropriate agencies of the state of Iowa and the requirements of this chapter are substantively satisfied therein. If an environmental impact statement, environmental assessment or agreement is used to fully or partially meet the requirements of a land restoration plan, the statement or agreement shall be filed with the board and shall be considered to be, or to be part of, the land restoration plan for purposes of this chapter.

**199–9.3(479,479A,479B) Procedure for review of plan.**

**9.3(1)** An interstate natural gas pipeline, or hazardous liquid pipeline that is subject to Iowa Code section 479.5 or 479B.4 shall file its proposed plan with the board at the time it files its petition for permit pursuant to 199 IAC 10.2(479) or 13.2(479B), or a petition for amendment to permit which proposes pipeline construction or relocation pursuant to 199 IAC 10.9(2) or 13.9(479B). Review of the land restoration plan will be coincident with the board's review of the application for permit, and objections to the proposed plan may be filed as part of the permit proceeding.

**9.3(2)** An interstate natural gas pipeline company that is required by rule 9.2 to file a land restoration plan shall file a proposed land restoration plan, or a petition requesting waiver of the plan filing requirement, with the board and the office of consumer advocate no later than 120 days prior to the date construction is scheduled to commence. If the pipeline company seeks waiver of the requirement that a plan be

filed, and instead proposes board acceptance of a Federal Energy Regulatory Commission environmental impact statement or environmental assessment, or of an agricultural impact mitigation or similar agreement, the filing shall include a copy of that document. If the document is not final at the time filing is required, the most recent draft or a statement of the anticipated relevant contents shall be filed. If a Federal Energy Regulatory Commission environmental impact statement or environmental assessment information, final or draft, is filed, the filing shall identify the specific provisions which contain the subject matter required by Iowa Code Supplement section 479A.14(1).

*a*. Any interested person may file an objection on or before the twentieth day after the date the plan is filed.

*b.* Within 45 days of the filing of the plan or waiver request, the Board will issue a decision on whether the filing demonstrates that the land restoration requirements of Iowa Code Supplement section 479A.14 and of these rules will be met. The board may impose terms and conditions if the filing is found to be incomplete or unsatisfactory. The board's action may also be conditional pending confirmation that the Federal Energy Regulatory Commission will not impose terms and conditions that are not consistent with the action taken by the board.

c. Interstate natural gas pipeline companies proposing pipeline construction requiring a Federal Energy Regulatory Commission certificate shall include a copy of 199-Chapter 9 in the notice mailed to affected landowners required by Federal Energy Regulatory Commission rule 18 CFR Part 157.6(d). Interstate natural gas pipeline companies proposing pipeline construction requiring a Federal Energy Regulatory Commission certificate shall also file the following with the board:

(1) A copy of the landowner notification required by Federal Energy Regulatory Commission rule 18 CFR Part 157.6(d), filed coincident with the mailing to landowners.

(2) Notice of any open public meeting with Iowa landowners scheduled by the company or by the Federal Energy Regulatory Commission.

(3) Copies of letters from Iowa landowners concerning the project filed with the Federal Energy Regulatory Commission, within 20 days of such filing.

(4) A copy of any agricultural impact mitigation or similar agreement reached with another state.

**9.3(3)** After the board has accepted the plan, but prior to construction, the pipeline company shall provide copies of the plan to all landowners of property that will be disturbed by the construction, and to the county board of supervisors and the county engineer of each affected county. However, if a waiver is granted pursuant to subrule 9.3(2), an interstate natural gas pipeline company need not provide landowners with second copies of environmental impact statements or environmental assessments if copies are provided to landowners by the Federal Energy Regulatory Commission.

**199–9.4(479,479A,479B) Restoration of agricultural lands.**

**9.4(1)** Topsoil separation and replacement.

a. Removal. Topsoil removal and replacement in accordance with this rule is required for any open excavation associated with the construction of a pipeline unless otherwise provided in these rules. The actual depth of the topsoil, not to exceed 36 inches, will first be stripped from the area to be excavated above the pipeline and, to a maximum of 12 inches, from the adjacent subsoil storage area. Topsoil shall also be removed and replaced in accordance with these rules at any location where land slope

or contour is significantly altered to facilitate construction. A pipeline company shall, upon a landowner's request, measure topsoil depth at selected locations before and after construction.

b. Soil storage. The topsoil and subsoil shall be segregated, stockpiled, and preserved separately during subsequent construction operations. The stored topsoil and subsoil shall have sufficient separation to prevent mixing during the storage period. Topsoil shall not be used to construct field entrances or drives, or be otherwise removed from the property, without the written consent of the landowner. Topsoil shall not be stored or stockpiled at locations that will be used as a traveled way by construction equipment without the written consent of the landowner.

c. Topsoil removal not required. Topsoil removal is not required where the pipeline is installed by plowing, jacking, boring, or other methods, which do not require the opening of a trench. If provided for in a written agreement with the landowner, topsoil removal is not required if the pipeline can be installed in a trench with a top width of 18 inches or less.

d. Backfill. The topsoil shall be replaced so the upper portion of the pipeline excavation and the crowned surface, and the cover layer of the area used for subsoil storage, contain only the topsoil originally removed. The depth of the replaced topsoil shall conform as nearly as possible to the depth removed. Where excavations are made for road, stream, drainage ditch, or other crossings, the original depth of topsoil shall be replaced as nearly as possible.

**9.4(2)** *Temporary and permanent repair of drain tile.*

*a*. *Pipeline clearance from drain tile.* Where underground drain tile is encountered, the pipeline shall be installed in such a manner that the permanent tile repair can be installed with at least 12 inches of clearance from the pipeline. *b. Temporary repair.* The following standards shall be used to determine if temporary repair of agricultural drainage tile lines encountered during pipeline construction is required.

(1) Any underground drain tile damaged, cut, or removed and found to be flowing or which subsequently begins to flow shall be temporarily repaired as soon as practicable and the repair shall be maintained as necessary to allow for its proper function during construction of the pipeline. The temporary repairs shall be maintained in good condition until permanent repairs are made.

(2) If tile lines are dry and water is not flowing, temporary repairs are not required if the permanent repair is made within ten days of the time the damage occurred.

(3) Temporary repair is not required if the angle between the trench and the tile lines places the tile end points too far apart for temporary repair to be practical.

(4) If temporary repair of the line is not made, the upstream exposed tile line shall not be obstructed but shall nonetheless be screened or otherwise protected to prevent the entry of foreign materials and small animals into the tile line system, and the downstream tile line entrance shall be capped or filtered to prevent entry of mud or foreign material into the line if the water level rises in the trench.

*c*. *Marking.* Any underground drain tile damaged, cut, or removed shall be marked by placing a highly visible flag in the trench spoil bank directly over or opposite such tile. This marker shall not be removed until the tile has been permanently repaired and the

repairs have been approved and accepted by the county inspector. If proper notice is given, construction shall not be delayed due to an inspector's failure to be present on the site.

*d*. *Permanent repairs.* Tile disturbed or damaged by pipeline construction shall be repaired to its original or better condition. Permanent repairs shall be completed as soon as is practical after the pipeline is installed in the trench and prior to backfilling of the trench over the tile line. Permanent repair and replacement of damaged drain tile shall be performed in accordance with the following requirements:

(1) All damaged, broken, or cracked tile shall be removed.

(2) Only unobstructed tile shall be used for replacement.

(3) The tile furnished for replacement purposes shall be of a quality, size and flow capacity at least equal to that of the tile being replaced.

(4) Tile shall be replaced so that its original gradient and alignment are restored, except where relocation or rerouting is required for angled crossings. Tile lines at a sharp angle to the trench shall be repaired in the manner shown on Drawing No. IUB PL-1 at the end of this chapter.

(5) The replaced tile shall be firmly supported to prevent loss of gradient or alignment due to soil settlement. The method used shall be comparable to that shown on Drawing No. IUB PL-1 at the end of this chapter.

(6) Before completing permanent tile repairs, all tile lines shall be examined visually, by probing, or by other appropriate means on both sides of the trench within any work area to check for tile that might have been damaged by construction equipment. If tile

lines are found to be damaged, they must be repaired to operate as well after construction as before construction began.

*e. Inspection.* Prior to backfilling of the applicable trench area, each permanent tile repair shall be inspected for compliance by the county inspector. If proper notice is given, construction shall not be delayed due to an inspector's failure to be present on the site.

*f. Backfilling.* The backfill surrounding the permanently repaired drain tile shall be completed at the time of the repair and in a manner that ensures that any further backfilling will not damage or misalign the repaired section of the tile line. The backfill shall be inspected for compliance by the county inspector. If proper notice is given, construction shall not be delayed due to an inspector's failure to be present on the site.

*g*. *Subsurface drainage*. Subsequent to pipeline construction and permanent repair, if it becomes apparent the tile line in the area disturbed by construction is not functioning correctly or that the land adjacent to the pipeline is not draining properly, which can reasonably be attributed to the pipeline construction, the pipeline company shall make further repairs or install additional tile as necessary to restore subsurface drainage.

**9.4(3)** *Removal of rocks and debris from the right-of-way.*

*a*. *Removal.* The topsoil, when backfilled, and the easement area shall be free of all rock larger than three inches in average diameter not native to the topsoil prior to excavation. Where rocks over three inches in size are present, their size and frequency shall be similar to adjacent soil not disturbed by construction. The top 24 inches of the trench backfill shall not contain rocks in any greater concentration or size than exist in

the adjacent natural soils. Consolidated rock removed by blasting or mechanical means shall not be placed in the backfill above the natural bedrock profile or above the frost line. In addition, the pipeline company shall examine areas adjacent to the easement and along access roads, and shall remove any large rocks or debris which may have rolled or blown from the right-of-way or fallen from vehicles.

*b. Disposal.* Rock which cannot remain in or be used as backfill shall be disposed of at locations and in a manner mutually satisfactory to the company and the landowner. Soil from which excess rock has been removed may be used for backfill. All debris attributable to the pipeline construction and related activities shall be removed and disposed of properly. For the purposes of this rule, debris shall include spilled oil, grease, fuel, or other petroleum or chemical products. Such products and any contaminated soil shall be removed for proper disposal or treated by appropriate in situ remediation.

**9.4(4)** *Restoration after soil compaction and rutting.*

*a. Agricultural restoration.* Agricultural land, including off right-of-way access roads traversed by heavy construction equipment that will be removed, shall be deep tilled to alleviate soil compaction upon completion of construction on the property. If the topsoil was removed from the area to be tilled, the tillage shall precede replacement of the topsoil. At least three passes with the deep tillage equipment shall be made. Tillage shall be at least 18 inches deep in land used for crop production and 12 inches deep on other lands, and shall be performed under soil moisture conditions which permit effective working of the soil. Upon agreement, this tillage may be performed by the landowners or tenants using their own equipment.

*b*. *Rutted land restoration*. Rutted land shall be graded and tilled until restored to as near as practical to its preconstruction condition. On land from which topsoil was removed, the rutting shall be remedied before the topsoil is replaced.

**9.4(5)** *Restoration of terraces, waterways, and other erosion control structures.* Existing soil conservation practices and structures damaged by the construction of a pipeline shall be restored to the elevation and grade existing prior to the time of pipeline construction. Any drain lines or flow diversion devices impacted by pipeline construction shall be repaired or modified as needed. Soil used to repair embankments intended to retain water shall be well compacted. Disturbed vegetation shall be reestablished, including a cover crop when appropriate. Restoration of terraces shall be in accordance with Drawing No. IUB PL-2 at the end of this chapter. Such restoration shall be inspected for compliance by the county inspector. If proper notice is given, construction shall not be delayed due to an inspector's failure to be present on the site.

**9.4(6)** *Revegetation of untilled land.*

*a*. *Crop production*. Agricultural land not in row crop or small grain production at the time of construction, including hay ground and land in conservation or set-aside programs, shall be reseeded, including use of a cover crop when appropriate, following completion of deep tillage and replacement of the topsoil. The seed mix used shall restore the original or a comparable ground cover unless otherwise requested by the landowner. If the land is to be placed in crop production the following year, paragraph "b" below shall apply.

*b*. *Delayed crop production*. Agricultural land used for row crop or small grain production which will not be planted in that calendar year due to the pipeline

construction shall be seeded with an appropriate cover crop following replacement of the topsoil and completion of deep tillage. However, cover crop seeding may be delayed if construction is completed too late in the year for a cover crop to become established and in such instances is not required if the landowner or tenant proposes to till the land the following year. The landowner may request ground cover where the construction is completed too late in the year for a cover crop to become established to prevent soil erosion.

**9.4(7)** *Future installation of drain tile or soil conservation structures.*

a. Future drain tile. At locations where the proposed installation of underground drain tile is made known in writing to the company prior to the securing of an easement on the property and has been defined by a qualified technician, the pipeline shall be installed at a depth which will permit proper clearance between the pipeline and the proposed tile installation. The pipeline company shall consult with the landowner concerning the landowner's plans for future drain tile installation.

b. Future practices and structures. At locations where the proposed installation of soil conservation practices and structures is made known in writing to the company prior to the securing of an easement on the property and has been defined by a qualified technician, the pipeline shall be installed at a depth which will allow for future installation of such soil conservation practices and structures and retain the integrity of the pipeline. The pipeline company shall consult with the landowner concerning the landowner's plans for future installation of soil conservation practices and structures.

**9.4(8)** *Restoration of land slope and contour.* Upon completion of construction, the slope, contour, grade, and drainage pattern of the disturbed area shall be restored as

nearly as possible to its preconstruction condition. However, the trench may be crowned to allow for anticipated settlement of the backfill. Excessive or insufficient settlement of the trench area, which visibly affects land contour or undesirably alters surface drainage, shall be remediated by means such as regrading and, if necessary, import of appropriate fill material. Disturbed areas in which erosion causes formation of rills or channels, or areas of heavy sediment deposition, shall be regraded as needed. On steep slopes, methods such as sediment barriers, slope breakers, or mulching shall be used as necessary to control erosion until vegetation can be reestablished.

**9.4(9)** *Restoration of areas used for field entrances and temporary roads.* Upon completion of construction and land restoration, field entrances or temporary roads built as part of the construction project shall be removed and the land made suitable for return to its previous use. Areas affected shall be regraded as required by subrule 9.4(8) and deep tilled as required by subrule 9.4(4). If by agreement or at landowner request, and subject to any necessary approval by local public road authorities, a field entrance or road is to be left in place, it shall be left in a graded and serviceable condition.

**9.4(10)** *Construction in wet conditions.* Construction in wet soil conditions shall not commence or continue at times when or locations where the passage of heavy construction equipment may cause rutting to the extent that the topsoil and subsoil are mixed, or underground drainage structures may be damaged. To facilitate construction in soft soils, the pipeline company may elect to remove and stockpile the topsoil from the traveled way, install mats or padding, or use other methods acceptable to the county inspector. Topsoil removal, storage, and replacement shall comply with subrule 9.4(1).

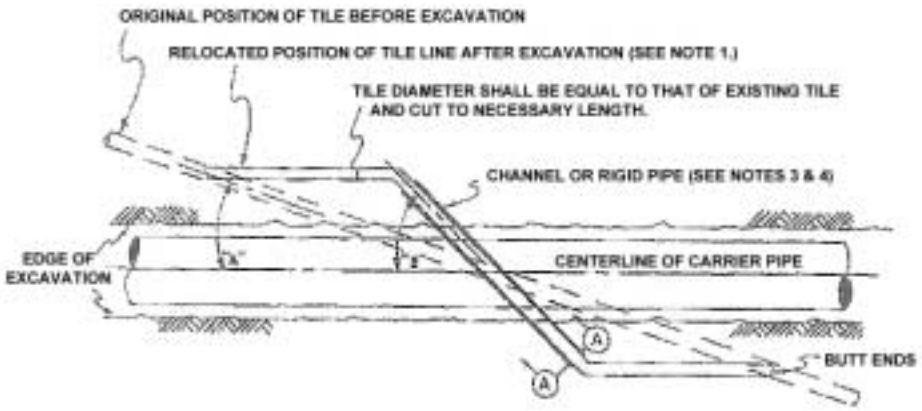
**199–9.5(479,479A,479B) Designation of a pipeline company point of contact for landowner inquiries or claims.** For each pipeline construction project subject to this chapter, the pipeline company shall designate a point of contact for landowner inquiries or claims. The designation shall include the name of an individual to contact and a toll-free telephone number and address through which that person can be reached. This information shall be provided to all landowners of property that will be disturbed by the pipeline project prior to commencement of construction. Any change in the point of contact shall be promptly communicated in writing to landowners. A designated point of contact shall remain available for all landowners for at least one year following completion of construction and for landowners with unresolved damage claims until such time as those claims are settled.

**199–9.6(479,479A,479B) Separate agreements.** This chapter does not preclude the application of provisions for protecting or restoring property that are different from those contained in this chapter, or in a land restoration plan, which are contained in easements or other agreements independently executed by the pipeline company and the landowner. The alternative provision shall not be inconsistent with state law or these rules. The agreement shall be in writing and a copy provided to the county inspector. The pipeline company may request that the county designate a specific person to receive the agreements.

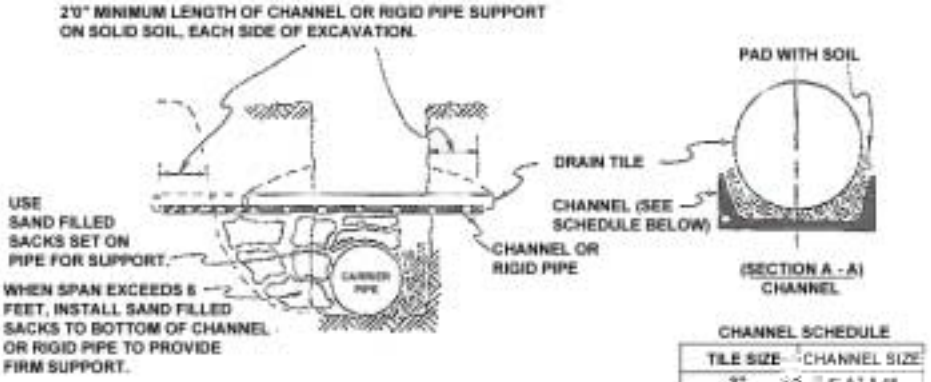
**199–9.7(479,479A,479B) Enforcement.** A pipeline company shall fully cooperate with county inspectors in the performance of their duties under Iowa Code Supplement sections 479.29, 479A.14, and 479B.20, including giving proper notice of trenching, permanent tile repair, or backfilling. If the pipeline company or its contractor does not

comply with the requirements of Iowa Code sections 479.29, 479A.14, or 479B.20, with the land restoration plan, or with an independent agreement on land restoration or line location, the county board of supervisors may petition the utilities board for an order requiring corrective action to be taken or seeking imposition of civil penalties, or both. Upon receipt of a petition from the county board of supervisors, the board will schedule a hearing and such other procedures as appropriate. The county will be responsible for investigation and for prosecution of the case before the board.

# RESTORATION OF DRAIN TILE




(PLAN VIEW)

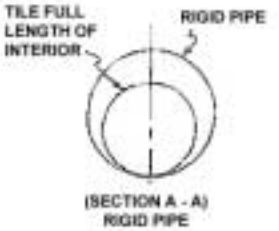



(METHOD OF SUPPORT - - ELEVATION)

CHANNEL SCHEDULE

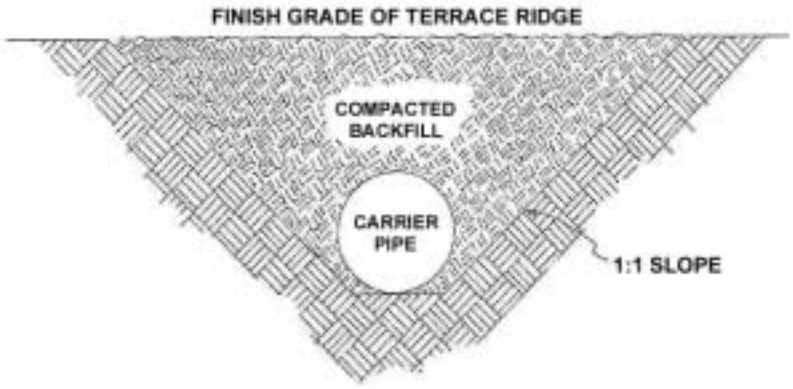
| TILE SIZE | CHANNEL SIZE |
|---|---|
| 3" | 4" AT 5.4# |
| 4" - 5" | 5" AT 6.7# |
| 6" - 9" | 7" AT 9.8# |
| 10" & LARGER | 10" AT 15.3# |

NOTES:
1. TILE SHALL BE RELOCATED AS SHOWN WHEN ANGLE "A" BETWEEN PIPELINE AND ORIGINAL TILE IS LESS THAN 20° UNLESS OTHERWISE AGREED TO BY LANDOWNER AND COMPANY.
2. ANGLE "B" SHALL BE 45° FOR USUAL WIDTHS OF TRENCH. FOR EXTRA WIDTHS, IT MAY BE GREATER.
3. DIAMETER OF RIGID PIPE SHALL BE OF ADEQUATE SIZE TO ALLOW FOR THE INSTALLATION OF THE TILE FOR THE FULL LENGTH OF THE RIGID PIPE.
4. OTHER METHODS OF SUPPORTING DRAIN TILE MAY BE USED IF THE ALTERNATE PROPOSED IS EQUIVALENT IN STRENGTH TO THE CHANNEL SECTIONS SHOWN AND IF APPROVED BY THE LANDOWNER.




IJB PL-1

**RESTORATION OF TERRACE**




NOTE:

COMPACTION OF BACKFILL TO BE EQUAL TO THAT OF THE UNDISTURBED ADJACENT SOIL.

IUB PL-2

These rules are intended to implement Iowa Code sections 479.29, 479A.14, and 479B.20.

January 10, 2001

/s/ Allan T. Thoms
Allan T. Thoms
Chairperson